(15,170.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1895.

No. 177.

HENRY W. BLAGGE AND SUSAN B. SAMUELS, ADMINISTRATORS, PLAINTIFFS IN ERROR,

vs.

FRANCIS V. BALCH, ADMINISTRATOR.

IN ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 10, 1895.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the supreme judicial court of the Commonwealth of Massachusetts, holden at Dedham, within and for the county of Norfolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme judicial court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between Francis V. Balch, administrator, plaintiff, and Henry W. Blagge and Susan B. Samuels, administrators, defendants, in a petition for an order of distribution, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Blagge and Samuels, administrators, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States,
District of Massachusetts.

Allowed by—

WALBRIDGE A. FIELD,
Chief Justice of the Supreme Judicial Court of Massachusetts.

2 BOSTON, MASS., *October 7th*, 1892.

We hereby accept service of within writ and all further service thereof is waived.

BALCH & RACKEMANN,
Attorneys for Francis V. Balch, Adm'r.

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

And now here the judges of the supreme judicial court of said Commonwealth within and for said county make return of this writ by annexing hereto and sending herewith, under the seal of the said supreme judicial court *court*, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, Erastus Worthington, clerk of said supreme judicial court for the county of Norfolk, have hereto set my hand and the seal of said court this seventh day of October, A. D. 1892.

Seal Norfolk County.

ERASTUS WORTHINGTON, *Clerk.*

3 (*Bond on Writ of Error.*)

Know all men by these presents that we, Susan B. Samuels and Edward M. French, both of Waltham, in the county of Middlesex, are held and firmly bound unto Francis V. Balch, of Boston, in the full and just sum of five hundred dollars, to be paid to the said Francis V. Balch, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a term of the supreme judicial court for the county of Norfolk, in a suit depending in said court between Francis V. Balch, adm'r, *v.* Henry W. Blagge and Susan B. Samuels, adm'rs, judgment was rendered against the said Blagge and Samuels, and the said Blagge and Samuels having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Francis V. Balch, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Blagge and Samuels shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea

good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

SUSAN B. SAMUELS. [L. S.]
EDWARD M. FRENCH. [L. S.]

Signed, sealed, and delivered in presence of—
E. IRVING SMITH.

Approved:
WALBRIDGE A. FIELD,
Chief Justice of the Supreme Judicial Court of Massachusetts.

Seal Norfolk County. A true copy of the bond taken by the judge at the time of allowing the writ of error named in said bond, which bond is on file in the office of the clerk of the supreme judicial court for the county of Norfolk.

Attest: R. B. WORTHINGTON,
Assistant Clerk.

4 COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

At the Supreme Judicial Court for the Commonwealth of Massachusetts, Held at Dedham, within and for the County of Norfolk, for the Hearing of Cases in Equity.

FRANCIS V. BALCH, Administrator *de bonis non*, with the Will Annexed, of the Estate of Henry Hatch, Petitioner for Partial Distribution, Appellee,
against
HENRY W. BLAGGE *et al.*, Administrators *de bonis non*, with the Will Annexed, of the Estate of Crowell Hatch, Appellants from Decree of Probate Court within and for said County of Norfolk.

This appeal was entered in this court on the third day of February, A. D. 1892, when the appellants filed the following copies of proceedings in the probate court for said county of Norfolk:

(*Petition.*)

To the honorable the judge of the probate court in and for the county of Norfolk:

Respectfully represents Francis V. Balch of Boston, in the county of Suffolk, that he is administrator *de bonis non*, with will annexed, of Henry Hatch, late of Roxbury, deceased, testate, who was a son of Crowell Hatch, of Roxbury, deceased, testate, and was also one of his residuary devisees, and that as such son and residuary devisee said Henry Hatch was entitled to one-fourth of all the real and personal estate of said Crowell Hatch; that there is a balance of the estate of said Crowell Hatch which remains in the hands of his administrators *de bonis non* with the will annexed, viz: of Henry

W. Blagge and Susan B. Samuels, for distribution; that a petition was presented by Susan B. for distribution of $\frac{9}{16}$ of said balance among persons alleged to be the next of kin of said Crowell Hatch without mentioning said Henry Hatch or his representatives, and that a decree was, September 16, 1891, made accordingly; that it is true that said Henry Hatch died without issue, and devised his estate to his wife, who was not of kin to said Crowell; but your petitioner avers that he is nevertheless entitled to the share to which said Henry would have been entitled if living; and your petitioner prays that distribution may be ordered to him of one-fourth of the balance (of which $\frac{9}{16}$ were by said decree ordered to be distributed), such payment to be made out of the $\frac{7}{16}$ remaining.

FRANCIS V. BALCH,
Administrator de bonis non,
with the Will Annexed, of Henry Hatch.

5 COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

OCTOBER 5, A. D. 1891.

Then personally appeared the above-named Francis V. Balch, administrator, etc., and made oath to the truth of the above representation, according to the best of his knowledge and belief.

Before me— JOHN D. COBB,
Justice of the Peace.

True copy.
Attest: JOHN D. COBB,
Assistant Register.

(*Decree.*)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk,* } *ss:*

At a probate court holden at Dedham, in and for said county of Norfolk, on the third day of February, in the year of our Lord one thousand eight hundred and ninety-two.

On the petition of Francis V. Balch, administrator *de bonis non* with the will annexed of Henry Hatch, praying for partial distribution of the balance of the estate of Crowell Hatch, late of Roxbury, remaining in the hands of the administrators of said Crowell Hatch's estate for distribution, due notice having been given to all persons interested according to the order of this court on file, and the administrators of said Crowell having been heard by counsel, and said petitioner heard in his own behalf, and it being made to appear to the court that said Henry Hatch was one of the four children and next of kin of said Crowell, who were also his residuary devisees, and that said petitioner is entitled to four-sixteenths of the original amount, viz: four-sevenths of the said balance, said balance being $\frac{7}{16}$ of the amount received from certain French claims, so called,

$\frac{9}{16}$ of which were ordered distributed by a decree of this court, dated September 16, 1891, among the descendants of the three other children of said Crowell Hatch now living, and that partial distribution can be made of said balance without detriment to the estate of said Crowell, which is in process of settlement in this court:

It is ordered and decreed, in amendment of and substitution for decree of this court of January sixth last, on same petition, that said administrators of said Crowell pay by way of partial distribution three-sixteenths of the amount on hand for distribution at date of said decree of September 16, being three-sevenths of the $\frac{7}{16}$ reserved by said decree, to the petitioner, leaving four-sixteenths for future distribution, and let an additional distribution sheet for this payment issue.

GEORGE WHITE,
Judge of Probate Court.

True copy.
Attest: JOHN D. COBB,
Assistant Register.

6 (*Order for Distribution.*)

COMMONWEALTH OF MASSACHUSETTS, *Norfolk*, } *ss:*

Probate Court.

[L. S.]

To Henry W. Blagge and Susan B. Samuels, administrators, with the will annexed, of the estate not already administered of Crowell Hatch, of Roxbury, in said county, Greeting:

By virtue of the power and authority vested in me, I, George White, Esquire, judge of the probate court in and for said county of Norfolk, do hereby order that out of the balance of six thousand three hundred and fifty-two $\frac{95}{100}$ dollars, in your hands, according to your account allowed by said court on the sixteenth day of September, A. D. 1891, be distributed and paid by you forthwith to the person and in the amount hereinafter specified, who, it appears to the court, is the representative of one of the next of kin of said deceased, and entitled thereto in such proportion: retaining in your hands the balance after such payment thereof for future charges. This order being additional to an order passed Sept. 16, A. D. 1891, distributing $\frac{9}{16}$ of said balance. You are ordered to give written notice by mail or otherwise, to said person of the amount due him, and if any of said sums remain for six months unclaimed, you are directed to deposit the same in the Dedham Institution for Savings, in the name of the judge of said court for the time being, to accumulate for the persons entitled thereto. Within one year after the date hereof, you are required to present to this court, under oath, a true account of the payments made by you, and of the amounts deposited as aforesaid, together with the original certificates or other

of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administration respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

The respondents complied with the requirements of this proviso by satisfactory evidence to the Court of Claims that they represented the next of kin of Crowell Hatch, and also by giving adequate security for the legal disbursement of the award, and they thereupon, in May, 1891, received from the Treasury Department a draft for the amount appropriated to them.

Nine-sixteenths of the balance in their hands was, by the order of the probate court, by way of partial distribution, ordered to be paid over and disbursed to the next of kin of Crowell Hatch, not including the personal representative of said Henry Hatch. If the petitioner, as administrator of the estate of said Henry Hatch, is entitled to a distributive share of said fund, the case is to be remitted to the probate court for partial distribution as decreed, with permission to the respondents to apply for a bond of indemnity. Otherwise the petition is to be dismissed.

BALCH & RACKEMANN,
For Petitioner.
GEORGE A. KING,
For Respondents.

Norfolk, *ss:* Clerk's office. Received and filed Feb. 18, 1892.

8 And thereupon it was ordered by the court as follows:

(*Reservation.*)

At the request of both parties to this appeal from a decree of the probate court for the county of Norfolk, I reserve the case on the petition, decree, and order of distribution and agreed statement of facts for the full court.

JAMES M. BARKER, *J. S. J. C.*

Filed February 18, 1892.

And on the sixteenth day of September, A. D. 1892, the following rescript was entered in said case:

(*Rescript.*)

COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, Sept. 16, 1892.

In the Case of FRANCIS V. BALCH, Adm'r,
vs.
HENRY W. BLAGGE *et al.*

pending in the supreme judicial court for the county of Norfolk,

Ordered that the clerk of said court in said county make the following entry under said case in the docket of said court, viz: Decree affirmed.

By the court:

HENRY A. CLAPP, *Clerk.*

September 16, 1892.

9 (*Brief Statement of the Grounds and Reasons of the Decision.*)

The reasons appear in an opinion on file with the reporter.
Filed Sept. 16, 1892.

And thereupon, on the twenty-fourth day of September, A. D. 1892, the following final decree was entered in said case by the court:

(*Final Decree.*)

This cause came on to be heard before the full bench of the supreme judicial court and was argued by counsel, and having been decided, as appears by rescript handed down, it is now, in conformity with said rescript, ordered, adjudged, and decreed that the decree of the probate court appealed from be, and is hereby, affirmed.

By the court:

ERASTUS WORTHINGTON, *Clerk.*

Sept. 24, 1892.

And on the sixth day of October, A. D. 1892, the appellants in said case filed their assignment of errors as follows:

COMMONWEALTH OF MASSACHUSETTS,
Norfolk, } *ss:*

Supreme Judicial Court.

HENRY W. BLAGGE *et al.*, Administrators, Plaintiffs in Error,
vs.
FRANCIS V. BALCH, Administrator, Defendant in Error.

10 *Assignment of Errors.*

And now come the plaintiffs in error and assign for error in the proceeding and judgment the following, to wit:

That the court in the interpretation and construction of the following proviso in the act of Congress of March 3, 1891, being 26 U. S. Stat. at Large, 862, 908, "Provided, that in all cases where the original sufferers were adjudicated bankrupts the awards shall be made on behalf of the next of kin instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations respectively shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards," ruled and adjudged—

1. That the next of kin of the original sufferer who were entitled to the appropriation therein made were the next of kin living at the death of the original sufferer and not the next of kin living at the passage of said act.

2. That Henry Hatch, a son of Crowell Hatch, who died without issue long prior to the passage of said act, was next of kin within the meaning of said act, and that the defendant in error, as the administrator of his estate, was entitled to share in said appropriation.

And the plaintiffs in error claim that said ruling and judgment were erroneous, and they pray that the same may be reversed
11 and annulled.

GEO. A. KING,
Counsel for the Plaintiffs in Error.

(Received and filed October 6, 1892.)

COMMONWEALTH OF MASSACHUSETTS:

I, Erastus Worthington, clerk of the supreme judicial court of said Commonwealth within and for the county of Norfolk, do certify that the foregoing are true copies of the record and proceedings, with all things concerning the same, in the suit hereinbefore named.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme judicial court, at Dedham, this seventh day of October, in the year eighteen hundred and ninety-two.

Seal Norfolk County.

ERASTUS WORTHINGTON, *Clerk.*

Endorsed on cover: Case No. 15,170. Massachusetts supreme judicial court. Term No., 177. Henry W. Blagge & Susan B. Samuels, administrators, pl'ffs in error, *vs.* Francis V. Balch, administrator. Filed October 10, 1892.